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NO. 95-5207

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
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BRYON KEITH COOPER,

Petitioner,

vs.

THE STATE OF OKLAHOMA,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether it is constitutional for a state to require a criminal defendant to sustain his claim of incompetency by clear and convincing evidence.

IN THE SUPREME COURT OF THE UNITED STATES

BYRON KEITH COOPER,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. 95-5207**
	)	
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Comes now Respondent, the State of Oklahoma, by and through W.A. Drew Edmondson, Attorney General of the State of Oklahoma, and in respond to Petitioner's Petition for Writ of Certiorari, states the following:

STATEMENT OF THE CASE

Byron Keith Cooper, hereinafter referred to as Petitioner, was tried and convicted for first degree murder in violation of Okla.Stat.tit. 21, 701.7(A) in the District Court of Oklahoma County. On September 8, 1989, the body of Harold Sheppard was found in his home at Northeast 13th and Fonshill streets in Oklahoma City, Oklahoma. Based on interviews with people in the neighborhood, authorities estimated that Sheppard was stabbed to death September 4, 1989. Petitioner became a suspect after using Mr. Sheppard's J.C.Penney card. Petitioner initially admitted murdering Mr. Sheppard but later retracted the admission. A watch and two camera belonging to Mr. Sheppard was found in the home where Petitioner had been staying. At Mr. Sheppard's house, authorities found Petitioner's fingerprints on a flashlight, a

metal can, a watch case and a carton of cigarettes. Petitioner's prints were also found on the charge receipt he signed at the J.C. Penney store at Shepherd Mall.

The jury found the existence of five aggravating circumstances: (1) that Petitioner had previously been convicted of a felony involving violence; (2) that the murder was especially heinous, atrocious or cruel; (3) that the murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution; (4) that the murders were committed while Petitioner was serving a sentence on a felony conviction; and (5) that there existed a probability Petitioner would commit criminal acts of violence which would constitute a continuing threat to society.

On January 10, 1995, the Oklahoma Court of Criminal Appeals issued an opinion affirming Petitioner's conviction in Cooper v. State, 889 P.2d 293 (Okl.Cr.1995). Rehearing was denied February 13, 1995. Petitioner is now seeking review by this Court.

SUMMARY OF THE ARGUMENT

Under Oklahoma law, a criminal defendant has the burden of proof in demonstrating whether he is competent to stand trial. This burden is sustained by introducing clear and convincing evidence. The defendant is presumed to be competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence. Okla.Stat.tit. 22 § 1175.4 (B) (Supp. 1994). Petitioner claims this standard of clear and

convincing evidence is so harsh that it violates Petitioner's right to due process under the Fourteenth Amendment.

In the opinion below, The Oklahoma Court of Criminal Appeals found that Oklahoma's competency statutes are constitutional as they did not "offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental". Cooper, 889 P.2d at 303 quoting Medina v. California, 505 U.S. ___, 112 S.Ct. 2572, 2577, 120 L.Ed.2d 353, 363 (1992).

REASONS FOR REFUSING TO GRANT THE WRIT

PROPOSITION I

THE OKLAHOMA STATUTES ALLOCATING THE BURDEN TO THE DEFENDANT TO PROVE INCOMPETENCY BY CLEAR AND CONVINCING EVIDENCE DO NOT VIOLATE DUE PROCESS.

Oklahoma statutes provide that, in order to be competent, a defendant must have sufficient ability to consult with an attorney and the defendant must be able to understand the nature of the charges and proceedings being brought against him. Okla.Stat.tit. 22, § 1175.1 (1991). Once an application to determine competency has been filed, the court must hold a hearing to examine the application. If the court finds the application to have merit, the court must order an examination by doctors or appropriate technicians who shall examine the defendant and determine if he can appreciate the nature of the charges, if he is capable of assisting his attorney and others. Okla.Stat.tit. 22, § 1175.3 (Supp. 1993). Following an initial determination by doctors or technicians, the court is required to hold a hearing on the issue of competency. At

that hearing, the defendant is presumed competent and must prove by clear and convincing evidence he is incompetent. Okla.Stat.tit. § 1175.4 (1991).

Petitioner, relying on Medina v. California, 505 U.S. ___, 112 S.Ct. 2572, 120 L.Ed.2d 353 (1992), argues that requiring him to prove his incompetence by clear and convincing evidence violates due process standards. Petitioner contends the burden of proof should be by a preponderance of the evidence. He claims requiring the defendant to sustain the burden of proof by clear and convincing evidence is violative of the Due Process Clause.

The Oklahoma Court of Criminal Appeals' opinion in this case h in which Oklahoma's statutes governing competency were found to be constitutional is thorough and well-reasoned. That court began its analysis with a discussion of the fundamental concept of Due Process. The court noted:

> It may however be stated generally that due process of law requires an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights.

Cooper, 889 P.2d at 301 quoting Stuart v. Palmer, 74 N.Y. 183, 191, 194 (1878). The court noted this Court's pronouncement that Due Process Clause has limited operation and that the category of infractions that violate "fundamental fairness" has been defined very narrowly". Cooper, 889 P.2d at 301 quoting Medina, 120 L.Ed.2d at 362.

As the Oklahoma court recognized, this Court in Addington v. Texas, 411 U.S. 418, 423, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979) held

that the function of the burden of proof is to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication". The Addington court also noted the standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decisions. The Oklahoma court noted that, in considering what standard should govern in a competency proceeding, it must assess the presumption of competency with the extend of the defendant's interest in not being tried while incompetent and the State's interest in being assured a defendant is not attempting to feign incompetence. Cooper, 889 P.2d at 302. The court also noted that a truly incompetent criminal defendant, though his attorneys and experts, can prove incompetency with relative ease. Cooper, 889 P.2d at 303. Balancing these standards, the court found that forcing a defendant to prove by clear and convincing evidence does not offend principles of fundament fairness. Id.

This is consistent with this Court's holding in Olim v. Wakinekona, 461 U.S. 238, 250, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983) that "process is not an end in itself". The constitutional purpose of due process if to protect a substantive interest to which an individual has a legitimate claim of entitlement. Id. The interest here is that a defendant may not be tried while incompetent. The procedures for protecting this interest are left to the individual states.

This Court has emphasized the preeminent role of the States in preventing and dealing with crime and the reluctance of the Court to disturb a States' decision with respect to the definition of criminal conduct and the procedures by which the criminal laws are to be enforced in the courts, including the burden of producing evidence and allocating the burden of persuasion. Martin v. Ohio, 480 U.S. 228, 232, 107 S.Ct. 1098, 94 L.Ed.2d 267 (1987).

In Parke v. Raley, 506 U.S. ___, 113 S.Ct. ___, 121 L.Ed.2d 391, 405 (1992), this Court noted, in the context of allocating the burden of proof in challenging the validity of a prior guilty plea to the defendant, that "[t]he Due Process Clause does not, however, require a State to adopt one procedure over another on the basis that it may produce results more favorable to the accused". Parke, 121 L.Ed.2d at 405, quoting Medina, 120 L.Ed.2d at 367.

Oklahoma has chosen to require a clear and convincing standard to the quantum of proof required to prove incompetent. Petitioner claims he had previously been found to be incompetent and it was against fundamental fairness to require him to take responsibility for proving his incompetency be clear and convincing evidence.

In Medina, this Court held that allocating the burden of proof to the defendant in competency proceedings does not violate due process standards. Although the issue in Medina was who bore the burden of proof rather than the standard of proof, the rationale behind the Medina decisions is equally applicable to a challenge as to the proper burden of proof standard. The rationale behind the Medina decision is that while a defendant has a right not to stand

trial while incompetent, states are free to establish their own rules for determining competency. The Court held:

> Once a State provides a defendant access to procedures for making a competency evaluation, however, we perceive no basis for holding that due process further requires the State to assume the burden of vindicating the defendant's constitutional right by persuading the trier of fact that the defendant is competent to stand trial.

Medina, 120 L.ed.2d at 366. The Medina court also dispelled the argument made by Petitioner herein that it is against fundamental fairness to demand that the defendant take responsibility for proving his incompetency. The Court held:

> Once a competency hearing is held, however, the defendant is entitled to the assistance of counsel, and psychiatric evidence is brought to bear on the questions of the defendant's mental condition. Although an impaired defendant might be limited in his ability to assist counsel in demonstrating incompetence, the defendant 's inability to assist counsel can, in and of itself, constitute probative evidence of incompetence, and defense counsel will often have the best-informed view of the defendant's ability to participate in his defense.

Medina, 120 L.Ed.2d at 366 (citations omitted). This is true regardless of whether the standard if by a preponderance of the evidence or by clear and convincing evidence. This is also true regardless of whether the defendant had previously been adjudicated by a court to be incompetent to stand trial.

This Court has recognized that a state procedures does not run afoul of the Constitution simply because another method may seem to be fairer or wiser or to "give a surer protection to the prisoner at the bar". Medina, 120 L.Ed.2d at 367 quoting Snyder v.

Massachusetts, 291 U.S. 97, 105, 54 S.Ct. 330, 78 L.Ed 674 (1934). State procedures are only unconstitutional if they "offend some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental". Medina, 120 L.Ed.2d at 364. The Oklahoma court acknowledged this concept and properly found that requiring Petitioner to bear the burden of proof by clear and convincing evidence did not violate fundamental fairness. Petitioner has presented nothing to the contrary and this Court should deny review of this issue.

CONCLUSION

Petitioner has provided no basis for review by this Court. The Oklahoma statute allocating the burden of proving incompetency to the defendant by clear and convincing evidence is a proper exercise of state legislative power and does not violate due process. This Court should refuse to grant certiorari review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sandra D. Howard, a member of the bar of this Court, do hereby certify that I have this 14th day of August, 1995, served a copy of Respondent's Response to Petition for Writ of Certiorari to the Oklahoma Court of Criminal Appeals on counsel for Petitioner, Robert A. Ravitz, Oklahoma County Public Defender, 320 Robert S. Kerr, Room 611, Oklahoma City, OK 73102, with adequate first class postage All parties required to be served have been served.

Sandra D. Howard

SANDRA D. HOWARD